

# The Gazette of India

## EXTRAORDINARY

### PART I—Section 1

## PUBLISHED BY AUTHORITY

No. 471] NEW DELHI, THURSDAY, NOVEMBER 20, 1952

### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 20th November, 1952*

**No 19/56/52-Elec.III.**—WHEREAS the election of Shri C. R. Narasimhan of 60, Fazlullah Road, Thyagarayanagar, Madras 17, as a member of the House of the People, from the Krishnagiri constituency of that House, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri P. N. Balasubramanian of 3, Marudandhu Street, Salem;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, NORTH ARCOT, VELLORE.

##### *Present*

Sri M. Anantanarayanan, I.C.S.	...	<i>Chairman.</i>
Sri P. Ramakrishnan, I.C.S.	...	<i>Members.</i>

and

Shri B. V. Visvanatha Aiyar, B.A., B.L.	...	<i>Member.</i>
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*Wednesday, the fifth day of November, one thousand nine hundred and fifty-two.*

*Election Petition No. 56 of 1952.*

P. N. Balasubramanian	...	<i>Petitioner.</i>
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##### *Versus*

1. C. R. Narasimhan
2. M. G. Natesa Chettiar
3. C. Duraiswami Gounder
4. M. Shamanna
5. H. R. Kullappan

} *Respondents,*

This Election Petition coming on for final hearing before us on the first day of November, 1952, in the presence of Messrs. Row and Reddy, Counsel, for the petitioner, of Messrs. S. Ramaswami Aiyar and P. S. Ramachandran, Counsel for the first respondent, the respondents 2 and 4 being absent *ex-parte*, and respondents 3 and 5 reporting no objection to the petition, and having stood over till this day for consideration, the Tribunal delivered the following.

### JUDGMENT

1. This is a petition seeking to set aside the election of the first respondent, Sri C. R. Narasimhan, for the Krishnagiri Parliamentary Constituency. The petitioner, Sri P. N. Balasubramanian, states in his petition that on the 21st of November 1951, which was the last date for the filing of the Nomination Papers, he filed his nomination paper before the Returning Officer. He also states that he had applied to the Election Commission for amendment of the Parliamentary Electoral Roll with a view to his inclusion in Salem Parliamentary Constituency, that before the date of the scrutiny, 28th November, 1951, the petitioner had got his name included in the Rolls of the Salem Parliamentary Constituency, that he produced a certified extract of the same before the Returning Officer, but that the latter, on an objection raised by the first respondent, rejected his nomination. The petitioner urges that there was, under the circumstances, an improper rejection of his nomination paper, which has materially affected the result of the election, and that the election is therefore void. All the persons nominated for the election have been implicated as respondents. Respondents 2 to 5 have not filed statement, nor have they appeared at the time of the disposal of the petition.

2. The first respondent, the successful candidate, avers in his statement that the petitioner was not qualified to be nominated as a candidate for the election as on the material date, the date of the nomination, he was not an elector for any Parliamentary Constituency on that date, and that the fact of his subsequent inclusion in the Roll could not validate that which was originally a bad nomination. He also states that the nomination paper of the petitioner was not completed in the prescribed form, inasmuch as necessary particulars regarding Columns 7 and 8 of the nomination form were not furnished. He further states that Rules 22 and 23 framed under the Representation of People Act, XLIII of 1950, went beyond the terms of Section 25 of the Act, and were consequently *ultra vires* and inoperative.

3. The Tribunal framed the following issues:

- (1) Is the rejection of the nomination of the petitioner by the Returning Officer improper or illegal for the reasons set forth in paragraphs 8 to 15 of the petition?
- (2) If the first issue is answered in the affirmative, is the election liable to be declared void by reason thereof?
- (3) Is the petitioner entitled to contend that he was validly nominated on the date of the nomination, although he was not on that date an elector shown as such in the electoral rolls, because of his subsequent inclusion in the rolls by an order of the Election Commission?
- (4) Is the subsequent inclusion of the petitioner in the electoral rolls invalid for the reason that Rules 29(2) and 23(2) made under Section 25 of Act XLIII of 1950, are *ultra vires* of the Act, and therefore operative?
- (5) Has this Tribunal jurisdiction to enquire about the validity of the said Rules?

4. The relevant facts for the purpose of deciding the petition are not in dispute. The name of the petitioner was not included in the Roll of any Parliamentary Constituency on the 21st of November 1951, the last date fixed for nomination of candidates for this Constituency. His application for inclusion in the Parliamentary Electoral Roll, Exhibit A-3, is undated, but the petitioner states that it was forwarded by him to the Election Commission on the 22nd of November, and that as a result of that application, his name was eventually included in the Parliamentary Roll of Salem Constituency on the 27th of November, that is, one day previous to the date fixed for the scrutiny. A perusal of Exhibit A-1, the nomination paper, discloses that as against Column 7 the petitioner states "Graduates Constituency (Salem District, Dharamapuri Taluk) (Laligam Panchayat)", and as against Col. 8 the entry is "Election Commissioner's number—dated—". A perusal of Exhibit A-2, the certified extract, shows that the name of the Petitioner was included in the Electoral Roll of the Salem Parliamentary Constituency. It does not state on what date such inclusion was made, but the Returning Officer

who enquired into the matter finds that it was included on 27th November, 1951. From the foregoing, it is clear that the petitioner was not included in the roll of any Parliamentary Constituency at the time of the filing of the nomination, but that his name was included in the Roll relating to Salem Parliamentary Constituency a day before the date fixed for scrutiny of the nomination papers.

5. Questions of considerable importance have been raised and argued with reference to the law relating to nomination in general, as well as the powers of the Returning Officer and the Election Tribunal regarding the rejection of a nomination paper. Firstly, a question of want of power on the part of the Returning Officer in respect of the rejection of the nomination paper, has been raised on behalf of the petitioner. It is urged that, once a candidate showed to the Returning Officer at the time of scrutiny that his name was on the Electoral Roll of a Parliamentary Constituency, it was not open to the Returning Officer to go behind the Rolls, and to ascertain if the candidate was really qualified to be a voter, and further to make an enquiry if his name was on the Rolls at the time of filing the nomination paper. Reliance was placed on the language of Section 33(6), which is in the following terms:

"If at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall, for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll".

Clause (6) however should be read with clause (5) of Section 33 which provides that "on the presentation of a nomination paper the Returning Officer shall satisfy himself that the names and electoral number of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls." In the case of the proposer and seconder, as also in the case of a candidate whose name is registered in the constituency for which he stands, it should be easy enough to verify the numbers with reference to the register with the Returning Officer. In such cases, there is no question of the production of the electoral roll. It is only in the limited class of cases where the candidate is registered in some other constituency, that the production of a copy of the roll becomes necessary. Counsel for the first respondent put forward a somewhat extreme contention that the Returning Officer was bound to reject the nomination paper forthwith, if such roll or extract thereof was not produced then and there, and that it was not open to him to grant further time for its production. It is difficult to uphold this contention, especially as there are no words in the clause compelling him to dismiss the nomination forthwith, or preventing him from giving time for the production of the extract. But the inference which the Petitioner seeks to draw, namely that once the roll is produced at some stage before the scrutiny, the Returning Officer is not entitled to hold an enquiry as regards the qualifications of the candidate does not follow from the language of Clause (6).

6. Reliance was also placed on behalf of the petitioner on the language of Clause (7)(a) of Section 36 which provides as follows:

"the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or seconder, as the case may be is disqualified under sub-section (2) of Section 33;"

It is a little difficult to follow what could have been intended by stating that the entry in the roll was conclusive evidence of the right of the elector to stand for election, or to subscribe the nomination paper. Counsel for the petitioner urges that this sub-section really placed his client's right to be nominated beyond the pale of enquiry by the Returning Officer, or by the Election Tribunal. To agree to this view would imply that the provisions contained in Section 36(2) are rendered nugatory and that the Returning Officer, though authorised by that clause to enquire into and to refuse a nomination for grounds that the candidate was not qualified to be chosen under the Act, or that there was a failure to comply with the provisions of Sections 33 and 34, was nevertheless powerless to do this because of clause 7(a) which prohibits him, according to this interpretation, from embarking upon any further enquiry whatever. This is to ignore the scheme and purpose of the Act, and would practically render the Returning Officer powerless to go

into a question of qualification or disqualification, once a person's name was inserted in the electoral roll. A construction which leads to such startling results cannot follow by implication but will have to be expressed in much clearer language before it can command acceptance. On the other hand, the most harmonious mode of construction will be to hold that the electoral roll is final and conclusive as regards the person's right to be on the roll, while the qualification or disqualification otherwise of the elector is always capable of being the subject of determination before the Returning Officer or the Election Tribunal. Pressed to its logical conclusion, the argument of the petitioner would go to this extent that a person has a right to stand for election, provided his name appears on the electoral roll of some Parliamentary Constituency at the time of the scrutiny, and that the Returning Officer cannot embark upon an enquiry whether he had the requisite qualification, namely, that of an elector at the time of the nomination. Both principle and authority are against this contention.

7. The decision in *Harford v. Linskey* (L.R. 1889 I-Q.B.852) throws some light on this point. There the question was whether the petitioner, who was interested in a contract with the Corporation of the Borough, was disqualified for election, even though he had assigned his interest in the contract before the date of the poll. It was urged, relying upon the case of *Pritchard v. Mayor of Bangor* (13 Appeal Cases 241), that the Returning Officer had no jurisdiction to determine the question of disqualification. The Court however rejected the contention in the following terms:

"Our decision does not involve the proposition that in every case a person whose nomination has been rejected on the ground of disqualification, or want of qualification, can maintain a petition. We do not understand it to be laid down in the *Bangor Case* that a nomination cannot ever be rejected except for informality in the form or presentation of it. If the nomination paper is, on the face of it, a mere abuse of the right of nomination, or an obvious unreality, as, for instance, if it purported to nominate a woman or a deceased sovereign, there can be no doubt that it ought to be rejected, and no petition could be maintained in respect of its rejection."

8. Section 84 of the Constitution of India prescribes the qualification for membership of Parliament, and Clause (c) states that the member must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. Section 4(d) of the Representation of the People Act, 1951, prescribes the qualifications for membership of the House of the People. It provides that "A person shall not be qualified to be chosen to fill a seat in the House of the People..... unless...(d) he is an elector for any Parliamentary Constituency", and the word 'elector' is defined in Section 2(e) as "a person whose name is for the time being entered in the electoral roll of that constituency". It would therefore be clear that the question of the status of an elector has to be looked at from the point of view of qualification, and, if that were so the Returning Officer has the power under Section 36(2) (a) to decide whether the candidate had the requisite qualification prescribed by the Act. The contention on behalf of the petitioner that the Returning Officer or the Election Tribunal cannot take up or decide a question of qualification or disqualification as mentioned in the Act, is devoid of substance and should therefore be rejected.

9. The next question that needs consideration is whether the nomination paper of the petitioner was liable to be rejected under Section 36(2)(d) of the Representation of the People Act, which provides that the Returning Officer may refuse the nomination on the ground that there was a failure to comply with the provisions of Section 33. Section 33(1) provides that, on or before the date appointed under Section 30(a), the candidate shall deliver to the Returning Officer the nomination paper completed in the prescribed form. The form prescribed by Schedule II states that particulars had to be furnished in Column 7 regarding the constituency in the Electoral Roll of which the name of the candidate is included, and in Column 8 regarding the serial number of the candidate in the electoral roll of the constituency in which his name is included. In this case the petitioner states as against Column 7 'Graduates Constituency', and as against Column 8 'Election Commissioner's No. ....dated ...'. In respect of Column 7 the entry made is meaningless, as the possible inclusion of the name of the petitioner in the Graduates Constituency had no bearing on the particulars required. As regards Column 8, it has to be taken as a case of total omission to furnish the required particulars. Learned Counsel for the first respondent urges that the omission to furnish the particulars is fatal to the nomination. On the other hand, Counsel for the petitioner contends that he was not bound to give the particulars as against the columns, and that it was quite sufficient if such particulars were

available to the Returning Officer by the time of the scrutiny. Stated in this extreme form, the contention of the petitioner cannot possibly be accepted. The provisions regarding the filling up of particulars in the Nomination Form are clearly founded upon considerations of high policy, of a policy which the Tribunal does not at all doubt is extremely beneficial. In fact, the Legislature has departed from the English Form, and specifically added that particulars regarding the Serial Number of the candidate on the electoral roll and not merely of the proposer and seconder as in England should be furnished. When it was put to the petitioner's Counsel whether the omission to give the electoral number of the proposer and seconder would be material, he was constrained to say that it will be on a par with the omission to give the electoral number of the candidate himself, and that all such omissions were immaterial. If really the insertion of the particulars in the Nomination Form was optional as contended, it is difficult to see why the Returning Officer should have been clothed with the power to reject the nomination for non-compliance of Section 33, which provides that the nomination paper shall be completed in the prescribed form. No doubt, a mistake in the insertion of the particulars themselves may be a ground for amending the form at a later stage with the consent of the Returning Officer, especially as Clause (4) of Section 36 provides that "the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character". It is not contended for the petitioner that there was a technical defect, or that there is any clerical error in the nomination paper, as stated in the Proviso to Section 33(5). On the other hand, it is contended that there is no technical defect at all in the form filed, and that a candidate cannot be penalised for failure to furnish a particular not within his knowledge then, even though it is considered important. This contention, however, ignores the purpose for which such particulars are prescribed by the Statute. Section 35 of the Act, enjoins upon the Returning Officer the duty to publish the notice of nomination containing the descriptions similar to those contained in the nomination paper both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder, and Form No. 2 framed under Rule 8 of the Rules provides that the Serial Number of the candidate in the electoral roll, as also the numbers of the proposer and seconder, should be furnished. While the giving of a wrong number may possibly, under given circumstances, be a mere irregularity which can be cured by correction, it is difficult to see how the omission to give any number at all can be condoned or can be treated as a surplusage, or a mere matter of form and not a statutory requirement.

10. In this connection reference may be made to the decision in *Gethard v. Clarke* (Law reports 5 Common Pleas Division-Page 253), which related to a Municipal election in England. Under Section 1, sub-section 2 and Schedule 1, Form 2 of the Municipal Elections Act, 1875 it was necessary that the nomination paper should contain the number on the Burgess Roll of the proposer and seconder. In that particular case the wrong number of the seconder was given. The Court came to the conclusion that the insertion of the wrong number was not due to a mistake, and that it was a fatal to the nomination paper. With reference to the requirement as to the electoral number, Justice Grove observed (at page 260) thus: "It is a new provision made for a good and sufficient reason. It is necessary that the person should be an enrolled burgess, and the statement of his number on the roll in the nomination paper is to enable persons to see whether those who nominate are actually enrolled and have the qualification which they assert in it. This is an obvious, simple, and useful provision". In the same judgment Lopes J., observed as follows: "If, again, the insertion of a wrong number is not to invalidate the nomination paper, the failure to insert any number cannot render it insufficient". The argument that neither the Returning Officer, nor the public at large, would be misled by such an omission was repelled by the same Judge in the following terms: "It is said, however, that in this case George Chapman is so well known that no person would be misled, and that the case finds no person was misled. If this list was the one intended to be applied, the Mayor in every case, when an objection like the present was taken, would have to hear evidence, and decide how far the inaccuracy was likely to mislead or mislead; such loose proceeding never could have been contemplated by the Legislature and the inconvenience of it is obvious for argument. I am of opinion that the Legislature intended to make obligatory the insertion of the register number in the nomination paper in order to afford to those whose concern it was to verify the nomination paper the readiest means of doing so." Reference was also made in this connection to the decision in *Baldwin v. Ellis* (1929—1 K.B.273). It was there contended that the omission to state the parish of which the person nominated was a Local Government elector was a mere technicality. This argument however did not find favour with Mr. Justice Swift, and the nomination

paper was rejected. In Election Petition No. 13 of 1952 a report which appears in the Gazette of India Extraordinary dated 27th August, 1952, at page 1998, it was held that the omission of the candidate to give his age in the nomination paper was a defect of a substantial character entailing the rejection of the nomination paper.

11. In view of the above decisions it would follow that the statutory requirement regarding the insertion of the constituency and number of the electoral roll as prescribed in Columns 7 and 8 was a matter of substance, and not a matter of mere form. The Legislature could not have intended to put the Nomination Form altogether at large, and, to let the parties to draw up the nomination paper in any way that they might think fit, without regard to the form proscribed. On the other hand, it would be more reasonable to hold that the Legislature prescribed a duty of care and thereby attached importance to matters which it had expressly indicated should be contained in the form of the nomination paper, especially as the Returning Officer was given the power of rejecting the nomination paper if the nomination paper was not completed in the manner provided in Section 33.

12. It is, however, argued that the requirement regarding the electoral number should in any view be condoned in this case, inasmuch as the petitioner could not have given such number on the date of the nomination, as he applied for being included in the rolls only subsequently, and in fact he did get the number only later. In his statement, the petitioner relied on a Press Note issued by the Election Commission, Exhibit A-5, in respect of this contention. A perusal of the Press Note however shows that what was contemplated by the Commission was an application for inclusion made before the nomination, though the result thereof might not have been duly communicated by then. If the roll had been revised on a date earlier than the nomination, the omission to give the particulars of the Serial Number might stand on a different footing, and may probably come under the expression 'technical defect' in Section 36(4). But where, as here, there was no application made before the nomination and there could possibly be no electoral number on that date, the defect is of a more substantial nature. To say that the number subsequently given could be availed of, would really amount to saying that what was originally an imperfect nomination could be cured by subsequent events. In fact, the requirement as regards the insertion of the number on the electoral roll in the nomination form, would seem to point to the conclusion that it was only persons that were already electors, and whose names had found a place in the electoral roll of some Parliamentary Constituency, that could be nominated as candidates for election. The omission on the part of the petitioner to complete the nomination paper as required by the Act was therefore a good ground for the rejection of the nomination paper by the Returning Officer.

13. It is however, not necessary to rest our decision solely on the foregoing ground, inasmuch as the petitioner is bound to fail even on the larger question raised by the 1st respondent, namely, that the candidate who seeks nomination should have been on the electoral roll of a Parliamentary Constituency on the date of the nomination, and it is not enough if by an amendment of the electoral roll his name is included thereon subsequently. The provisions of Section 4(d) together with the definition of 'elector' in Section 2(1)(e) of the Representation of the People Act, 1951 have already been referred to. Section 32 provides that "Any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provision of the Constitution and this Act". It would therefore follow that the question whether a person is an elector or not is a matter of qualification under the Act. It however remains to be considered if such a qualification, though lacking on the date of the nomination, could be acquired before the scrutiny. It cannot be disputed that in respect of an election there can only be one electoral roll, though it may be amended or revised from time to time. It is also clear that the legislature contemplated an electoral roll which may be varied from time to time as regards the names on such roll. The words 'for the time being' appear in clause (e) of Section 2, as also in Section 62 of the Act dealing with right of a person to vote. Counsel for the petitioner has contended that once a person's name is included in the electoral roll by means of an amendment, such insertion takes effect not only from the date on which he was brought in, but that it relates back to the original date on which the electoral roll finally came into existence. If this were so, no doubt the date of the nomination, being subsequent to the final publication of the electoral roll, would be taken in. But there is no reason in principle, and Counsel has not placed any authority before us for the proposition that the revised electoral roll would speak as from an anterior date. Reference has been made to Section 25 of the Representation of the People Act, 1950 which

provides for the revision or correction of Electoral rolls. The last words of the clause, that "the electoral roll shall be deemed to have been revised accordingly" are relied on as showing that the revised roll takes effect not only from the date of such revision, but from the publication of the roll itself. There is nothing in law to warrant this strange construction. On the other hand, such a construction would lead to great confusion, and would render the holding of an election extremely difficult. The words 'for the time being' used in Section 2(1)(e) have been inserted advisedly. Their effect is that a person should be an elector 'for the time being' namely, on the date of the nomination if he is to be validly nominated, and that he should 'for the time being be an elector' if he is to exercise his vote under Section 62.

14. In this connection reference was made by Counsel for the respondent to the case in *Maharaja Sir Manindra Chandra Nandy v. Pravash Chandra Mitter*. (Hammond's Election Cases 545). In that case the petitioner who was a member of the Council of State resigned his seat on the Council of State by telegram and letter addressed to the Viceroy on the 7th of October, 1923. The date fixed by the Government for the presentation of the nomination paper for election to the Bengal Legislative Council was 8th of October, and on that day the petitioner filed his nomination paper. Objection was raised on the ground that although he had resigned his seat in the Council of State on the 7th October, the resignation was formally accepted only on the 10th of October, and consequently he was not entitled to stand for election to the Legislative Council. It was contended on his

half that as scrutiny took place only on 11th October, and as the resignation is at any rate complete by that date, the petitioner was entitled to stand for election. It was however held that the eligibility of the candidate at the time of the nomination could alone be looked into and that the acquisition of new rights could not remove a pre-existing disqualification. At page 549 the following observations occur: "Learned Counsel further contends that the eligibility of a candidate depends on whether he was, as a fact, eligible on the date of the nomination. Election is a continuing process in which the nomination is the first step. The nomination is the foundation of a candidate's rights to go to the poll, and is an integral part of the election. Scrutiny is for the purpose of seeing that a person was required to be done had been done. It cannot be supposed that a person who is ineligible on the date of the nomination can, in the interval between the nomination and the scrutiny, acquire new rights, or that the acquisition of such rights would be sufficient to do away with his pre-existing disqualification". This statement is in consonance with principle, inasmuch as the nomination is a definite and complete process so far as election goes, and the scrutiny of the nomination paper is really part of the decision as regards the validity and completeness of the nomination. If the stage of nomination should not be treated as a stage complete by itself but could exist in inchoate or fluid state it will be extremely difficult for the Returning Officer to comply with the provisions of Section 35 of the Act and the object of the publication of such notices will not be achieved.

15. The decision in *Harford v. Linskey* (1889 2 Q.B. 852) which has already been referred to, throws some light on this question also. At page 858 Justice Wright observes thus: "In the absence of any guide, we think it safest to hold that in cases of elections under the Municipal Corporation Acts a person, who at the time of nomination is disqualified for election in the manner in which this petitioner was disqualified, is disqualified also for nomination. The nomination for this purpose an essential part of the election, and if there are no competitors itself constitutes the election by virtue of the express words of s.56. A different construction might produce such conclusion. On the nomination day no one could know whether the persons nominated will at the poll be effective candidates or not. It seems to us unreasonable to hold that the Act means to leave the matter in such a state of uncertainty, and for these reasons we think that this petitioner was disqualified for nomination or election". The further observation of His Lordship that "it is not necessary to say whether the same conclusion would follow if the disqualification was such as must necessarily cease at a time between nomination and poll" cannot be taken to mean, as the learned Counsel for the petitioner contends, that the qualification relates back but, on the other hand, must be read in the light of the provisions of Section 12 of the Municipal Corporation Act, which was the subject of construction, and which provided that a person shall be disqualified for being elected and for being a Councillor if and while he was so interested.

16. A recent decision of the Madras High Court *Saka Venkata Rao v. The Election Commissioner, India* (Writ Petition No. 599 of 1952) has also been brought to our notice. The question in that case was whether the Election Commissioner had jurisdiction to decide about a supervening disqualification in respect of a candidate who had properly been elected. After referring to Section 36 and

Section 100 of the Representation of People Act, 1951, His Lordship Mr. Justice Subba Rao, made the following observations: "The Constitution also prescribed a different and distinct machinery for excluding the disqualified persons from being chosen as, and for being member, of the Assembly. If a person is disqualified at the time of the nomination, the Returning Officer on scrutiny *suo motu* or on an objection being raised, may reject the name under Section 36 of the Act. If he wrongly includes a name, the aggrieved party would have his remedy to have the election set aside under Section 100 of the Act". Although the question was not pointedly raised in the above case as to what stage the disqualification should be referred, the observations extracted above clearly support the contention that regard should be had to the time of the nomination for ascertaining whether a person was qualified or disqualified from standing for election. It can well be imagined by parity of reasoning that a person qualified on the date of the nomination might be found to be disqualified on the date of the scrutiny. It cannot be said in such a case that the nomination itself was rendered invalid. The decision in *Saka Venkata Rao v. The Election Commissioner, India* cited above is authority for the position that a supervening disqualification will not nullify what originally was a valid election. The more reasonable and wholesome rule of construction will be to hold that the question of qualification or disqualification of a person to stand for election should be ascertained and worked out with reference to the date of the nomination.

17. We may here briefly note certain grounds which have been urged, with some earnestness, by learned Counsel for the petitioner, upon what he termed to be the broad principles of Section 36(2)(a) and 7(a), and the Act, itself. According to learned Counsel, the fact that the Tribunal has power to consider only the improper acceptance or rejection of any nomination under Section 100 (1) (c), and not any question of qualification or disqualification of the candidate as such, implies that the Tribunal is nothing more than an appellate authority over the acts of the Returning Officer. He contends that the earlier legislation was wider in scope. He further contends that the very scheme of the present Act, and particularly of Section 36, is to keep the door as wide open as possible for all candidates to earn the necessary qualification up to the last possible stage, the date of scrutiny. He argues that it is highly significant that the wording of Section 36(2) (a) is that "the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act" the present tense being deliberately employed. For this reason, learned Counsel would discountenance any considerable reliance upon the prior decided cases, whether English or Indian, as being relatively unhelpful in the task of interpretation of the present Act. We have carefully considered these arguments, and we have no hesitation in rejecting them as unsubstantial. As we have already seen, not only is the nomination an integral stage of an election, but the filing of papers of nomination is itself a very definite and significant step in the process of election. We have no reason at all for holding, or believing, that the present Act has introduced any novel departure from fundamental principles in this respect. Whatever might be our powers, compared to the powers vested in such Tribunals under the previous Act, it appears undeniable that the Returning Officer has power to refuse a nomination, and that we have power to proceed into the propriety of his decision. In our view, the prior case-law is helpful and relevant for the light it throws, not merely upon Section 36, but upon the previous Sections (33 *et seq*) indicative of the steps which lead up to the scrutiny by the Returning Officer, and his functions and powers. We further think that Section 36(2)(a) cannot be interpreted in isolation, but must be interpreted along with such provisions as Section 36(2) (d) and Section 32 of the Act. Even if the 'nomination' is a continuing process up to the final scrutiny, this cannot help the petitioner, for the date of filing of a valid nomination paper is a well-marked stage of the process, and rights and obligations have certainly been indicated with reference to this stage.

18. Looked at from the point of view indicated above, the case of the petitioner is wholly unsustainable. He was not an elector as defined in the Act on the date of the nomination, and if he was not an elector he was not qualified to stand for election, and if he was not qualified to stand for election, the Returning Officer was well within his power in rejecting the nomination paper as he did. The argument based on hardship to the petitioner does not appeal to us especially as a very slight degree of diligence on his part would have enabled him to assert his right much earlier. We are therefore of the opinion that the rejection of the nomination paper of the petitioner by the Returning Officer was in accordance with law, that there was no improper rejection and that the election is not liable to be set aside as claimed in the petition. We answer Issues 1, 2 and 3 against the petitioner. As



regards Issues 4 and 5, namely, whether Rules 29 and 23 are *ultra vires* of the Act, they do not arise for decision in view of our findings on the other issues, and we express no opinion on those points.

19. In the result, the Election petition is dismissed with costs, and we fix the Advocate's fee at Rs. 150/-.

Pronounced in open Court, this, the 5th day of November, 1952.

(Sd.) M. ANANTANARAYANAN, *Chairman.*

(Sd.) P. RAMAKRISHNAN, *Member.*

(Sd.) B. U. VISWANATHA AYYAR, *Member.*

*Petitioner's Exhibits:*

- A-1. 21st November, 1951.—Nomination paper presented by the petitioner to the Returning Officer.
- A-2. 27th November, 1951.—Certified Extract of the Parliamentary Electoral Roll relating to Salem Constituency.
- A-3. Application by the petitioner to the Secretary to the Election Commission, New Delhi, for inclusion of his name in the Assembly Electoral Roll of Salem Constituency.
- A-4. 28th November, 1951.—Proceedings of the Returning Officer for the Krishnagiri Parliamentary Constituency in respect of the nomination of the petitioner.
- A-5. 17th November, 1951.—Copy of the Press Note issued by the Election Commission India, New Delhi.

*Respondents' Exhibits:*

Nil.

Petitioner's & Respondents' witnesses.

Nil.

(Sd.) M. ANANTANARAYANAN, *Chairman.*

P. S. SUBRAMANIAN,  
Officer on Special Duty.

